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APPLICATION NUMBER 08/776,116	FILING DATE 12/21/96	FIRST NAMED APPLICANT WIDOWIK	ATTORNEY DOCKET NO. M P3544-A
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12M1/0428

EXAMINER
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MOSLEY, T

ART UNIT	PAPER NUMBER
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1207

DATE MAILED: 04/28/97

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☒ Responsive to communication(s) filed on 12/21/96
- ☐ This action is FINAL.
- ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-22 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☒ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

- SEE OFFICE ACTION ON THE FOLLOWING PAGES -

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\* Note that all responses to this action should be sent to Art Unit 1207.

### ***Double Patenting***

1. The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

2. Claims 1-21, and 22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 respectively of U.S. Patent No. 5587156. Although the conflicting claims are not identical, they are not patentably distinct from each other because the composition selected from...wetting agents, cleansing agents, lather producing compositions and emollients *and mixtures thereof* encompasses the mixture of said patent. Note that even without the language "and mixtures thereof" as noted in line 6 claim 1 of the claimed invention, the selection *is not limited to* only one agent etc. Thus, it would have been obvious for one of ordinary skill in the art to selected one, two....or all of the selected agents etc.

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***Claim Rejections - 35 USC § 112***

3. Claims 8 and 11 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 line 4 contains the recited "polyethelenes" which is unknown and accordingly unclear. See also claim 11.

4. Claims 12 -15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 12-15 are indefinite since it is held that claims which depend from an indefinite claim are also indefinite. Ex parte Cordova, 10 U.S.P.Q.2d 1949, 1952 (P.T.O. Bd. App. 1989).

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Terressa Mosley, via the receptionist whose telephone number is (703) 308-2351. The examiner can normally be reached on Monday through Thursday from 6:30a.m.-1:00p.m.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-1235.

tmm

April 25, 1997



Terressa M. Mosley  
Primary Examiner  
Group 1200